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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lake W. Greene, Jr. - Claim for Overtime
Compensation for Traveltime

File: B-227489

Date: November 30, 1987

DIGEST

An employee claims overtime pay for hours spent traveling to and from temporary duty where the travel was found to have resulted from an event which could have been scheduled or controlled administratively. Our prior denial of his claim is affirmed since the employee has not provided sufficient factual or legal support for the proposition that his traveltime both to and from temporary duty should qualify as hours of employment under the requirements of 5 U.S.C. § 5544(a) (1982).

DECISION

This decision is in response to a request by Mr. Lake W. Greene, Jr., that we reconsider our Claims Group settlement Z-2841008, October 1, 1985, in which we denied his claim for overtime pay while traveling to and from temporary duty at Nellis AFB, Nevada, in October 1980. For the reasons set forth below, we conclude that Mr. Greene is not entitled to overtime pay under these circumstances.

BACKGROUND

Mr. Greene is a wage-board employee of the Department of the Air Force who was assigned to temporary duty (TDY) at Nellis AFB, Nevada, by a travel order dated October 9, 1980. Mr. Greene departed for Nellis on Friday, October 10, and returned to his permanent duty station at Robins AFB, Georgia, on Saturday, October 18. The TDY mission was to perform corrective repairs to seven aircraft that were grounded. Mr. Greene is claiming overtime pay of \$334.69 for time spent traveling to his TDY point at Nellis on October 10 and from his TDY point on October 17 and 18.

Mr. Greene contends that he should be paid overtime for the time spent traveling to Nellis since he believes the travel was purely for the benefit of the Air Force and was in

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response to an "emergency TDY mission." In his claim letter dated February 23, 1981, he stated that he was alerted for the TDY on the morning of October 10 and flew out that same day. He further stated:

"I had no control over the scheduling of the TDY or the transportation to the TDY site. Since my involvement was totally for the convenience of the Air Force, I feel that I should be compensated for the time spent traveling outside my duty hours."

The Air Force disallowed Mr. Greene's claim for overtime pay for his travel to Nellis AFB on the basis that there was no available information to support his contention that the mission was of an emergency nature. The Air Force report states that neither the mission request nor the travel orders indicated that the situation was not under control of the Air Force.

Similarly, the Air Force denied overtime compensation for his return travel from Nellis AFB because his travel did not fall into one of the approved categories for premium pay. His return was under control of the Air Force and the scheduling was appropriate for his return. There was no reason for him to delay returning until the next duty day following TDY. In the return travel, premium pay was authorized only for that period of time he was traveling during normal duty hours on non-duty days.

Our Claims Group denied Mr. Greene's claim for overtime pay and stated that under section 5544(a)(iv) of title 5, United States Code, time spent in a travel status away from the official duty station of an employee is not hours of work unless it involves one of four conditions such as travel which results from an event which could not be scheduled or controlled administratively. Our Claims Group held that even though the repair work had to be done promptly on short notice, the time for scheduling of the repair was completely within the administrative control of the agency.

With regard to Mr. Green's return travel, our Claims Group noted that in John B. Schepman, et al., 60 Comp. Gen. 681 (1981), we held that the return travel of an employee back to his permanent station must also meet one of the conditions of the governing statute in order to qualify the traveltime involved as hours of employment. We further held in Schepman that an employee's mere presence at his permanent duty station on the next workday is not normally considered an administratively uncontrollable event.

Mr. Greene has now asked that we reconsider that Claims Group settlement, and he has reiterated his contentions that he was not given advance notice of the trip and that the travel was under emergency conditions since the damage to the equipment he was sent to repair was not gradual or predictable and since all the planes involved were grounded.

Regarding his return travel to Robins AFB, Mr. Greene states that there was only one flight available before Monday, October 20; that flight was scheduled to leave Nellis AFB at 10:50 p.m. on Friday, October 17 and arrive in Macon, Georgia, at 7:45 a.m. on Saturday, October 18. If he had waited until Monday, October 20, Mr. Greene could have flown from Nellis AFB to Robins AFB during normal duty hours. Mr. Greene states that the situation was discussed with a contact at Robins AFB who in turn stated that it would be more advantageous to the Government if he took the flight beginning on October 17 since leaving on October 20 would require renting another car plus additional per diem to cover the extra days. After this discussion with his contact, Mr. Greene proceeded to return on the October 17 flight.

OPINION

With regard to his travel to Nellis AFB, Mr. Greene restates his belief that the travel was the result of an emergency situation, but he has not provided any additional factual or legal support for his position. The determination of whether the travel is the result of an emergency situation under the requirements of 5 U.S.C. § 5544(a)(iv) (1982) is based upon a determination that the event cannot be scheduled or controlled administratively. In this case, as noted by the agency above, neither the mission request nor the travel orders have any indication of a situation that was not under the control of the Air Force. The travel order was issued on October 9, the day prior to departure, and the travel order indicated that the purpose of the TDY was "To accomplish continuity check on ACES II seats (F-15 aircraft)." The fact that Mr. Greene may not have been aware of the travel until October 10 is not dispositive of the question of whether the agency was in control of the scheduling. Thus, we conclude that Mr. Greene is not entitled to overtime for traveltime to his TDY assignment at Nellis AFB.

The information Mr. Greene provided regarding his return travel does not contradict our finding that the return travel was administratively controllable. As we noted in our Claims Group settlement, the return travel of an employee back to his permanent duty station must also meet one of the conditions of section 5 U.S.C. § 5544(a) in order

to qualify the traveltime involved as hours of employment. Those conditions are that the travel (i) must involve the performance of work while traveling, (ii) must be incident to travel that involves the performance of work while traveling, (iii) must be carried out under arduous conditions, or (iv) must result from an event which could not be scheduled or controlled administratively.

There is no indication in the record that Mr. Greene worked while traveling or that the travel was arduous. The fact that it may have been more advantageous from a per diem standpoint for Mr. Greene to return on one day rather than another does not negate the fact that there was no compelling reason of an emergency nature which required him to return on the day he did. See Schepman, cited above. The very fact that his agency had options and chose one over another indicates that his return travel was administratively controllable. Since none of the conditions of the statute are met, Mr. Greene's return traveltime does not qualify as hours of employment.

Accordingly, we sustain our Claims Group's denial of his claim for overtime pay.



Acting Comptroller General
of the United States